

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ANTHONY MICHAEL MARCELLI,

Case No. 3:12-cv-00211-MMD-WGC

Petitioner,

ORDER

v.

GREG COX, et al.,

Respondents.

This closed action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner. This matter comes before the Court on petitioner's motion to reopen the case. (Dkt. no. 51.)

On April 22, 2013, this Court ruled that all grounds of the federal habeas petition were unexhausted. (Dkt. no. 40.) The Court explained that, while the Court has discretion to hold a "mixed petition" (a petition containing both exhausted and unexhausted claims) in abeyance pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), it must dismiss a petition that contains only unexhausted claims. *Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006). Accordingly, the Court dismissed the petition in this case because it was wholly unexhausted. (Dkt. no. 40.) Judgment was entered by the Clerk of Court. (Dkt. no. 41.) If petitioner wishes to litigate a habeas petition, he must file a new habeas corpus action. The Court will not reopen this closed action.

It is therefore ordered that petitioner's motion to reopen this case (dkt. no. 51) is denied.

It is further ordered that the Clerk shall send petitioner the approved form for filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, as well as the document "Information and Instructions for Filing a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254."

It is further ordered that petitioner may file a new petition in a new action, but he may not file further documents in this closed action.

DATED THIS 20th day of January 2015.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE